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10/518,865	02/09/2005	Robin Matthews	04356-PCT-PA	5818
72468	7590	09/22/2009	EXAMINER	
HODES, PESSIN & KATZ , P.A 901 DULANEY VALLEY ROAD , SUITE 400 BALTIMORE, MD 21204			YIP, JACK	
		ART UNIT	PAPER NUMBER	
		3715		
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		09/22/2009	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/518,865	MATTHEWS, ROBIN
	<b>Examiner</b>	<b>Art Unit</b>
	JACK YIP	3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 March 2009.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,6-10,19,20,38,39,41,42,46-48,52 and 53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,6-10,19,20,38,39,41,42,46-48,52 and 53 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

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## DETAILED ACTION

### *Response to Amendment*

1. In response to the amendment filed 5/14/2009; claims 1-2,6-7,9-10,19-20,38-39,41-42,46-48,52-53 are pending; claims 3-5,8,11-18,21-28,31,34,37,40,43-45,49-51 are cancelled; claims 29-30,32-33,35-36 are not elected.
2. A telephone call on 9/16/2009 to applicant's representative Robert M. Gamson (Reg No. 32,986) has confirmed that claims 29 - 30, 32 - 33, 35 - 36 should be noted as "withdrawn".

### *Claim Rejections - 35 USC § 101*

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. **Claim(s) 1 - 2, 6 - 7, 38 - 39, 41 - 42, 48 is/are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention.** Supreme Court precedent (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) and recent Federal Circuit decisions (*In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008)) indicate that a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. While the instant claim(s) recite a series of steps or acts to be performed, the claim(s) neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process. For example, claims 1, 38, 41 state "A method for simulating an athletic event, comprising ... ", "A method of simulating at least a portion of an athletic game or sport ... ", however, the method steps or acts have not been positively tied to a statutory products or things to accomplish such steps or acts.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. **Claims 1-2,6-7,9-10,19-20, 41-42,46-48, 52-53 are rejected under 35 U.S.C. 102(a) as being anticipated by Madden NFL 2002 for PlayStation 2 (release 8/19/2001) evident by www.gamespot.com (denoted herein after as Madden).**

Madden discloses

Re claims 1, 52, 53:

[Claim 1] A method for simulating an athletic event, comprising (Madden, pg 1 - 3):

entering players for positions in a squad on an offensive (Madden, pg 16), defensive or special team (Madden, pg 16 - 17), wherein each player has vital statistics, general attributes (Madden, pg 9, "The height and weight stats are customizable..."), offensive/defensive attributes (Madden, pg 16 - 17) and specialized attributes which predict athletic performance (Madden, pg 9, "With the game's extensive general manager options, you can do everything from creating a player to creating an entire team...If you enjoy customizing your own team and players...");

placing each player in a formation (Madden, from pg 16, "2. Player Positions");

establishing a play based on the formation in which the moving pattern and activity of each player is defined (Madden, from pg 16, "2. Player Positions");

simulating the play by having each player executing the moving pattern and activity as modified by the vital statistics, general attributes, offensive/defensive attributes and specialized attributes associated with each player, wherein the outcome of the play is based upon the moving patterns and activities as modified by the attributes associated with each player. (Madden discloses a video game that simulating a real football game where a user can assign each player of position (Madden, from pg 16, "2. Player Positions"), wherein each player has his/her own attributes/abilities (Madden, from pg 106, "Breakdown").)

[Claim 52] An athletic simulation system having at least one graphical user interface, at least one display (Madden, pg 8, "widescreen TV support"), at least one electronic processing unit and at least one selection device (Madden, pg 8, "Playstation 2"), comprising:

an electronic data storage component operative (Madden, pg 78, Playstation 2 game DVD) to enter players for positions in a squad on an offensive, defensive or special team, wherein each player has vital statistics, general attributes, offensive/defensive attributes and specialized attributes which predict athletic performance;

placing each player in a formation;

establishing a play based on the formation in which the moving pattern and activity of each player is defined; simulating the play by having each player executing the moving pattern and activity as modified by the vital statistics, general attributes, offensive/defensive attributes and specialized attributes associated with each player, wherein the outcome of the play is based upon the moving patterns and activities as modified by the attributes associated with each player (See claim 1 above).

[Claim 53] An athletic game or sport simulation system having at least one graphical user interface, at least one display, at least one electronic processing unit and at least one selection device and for at least one player on a team participating in said athletic game or sport (Madden, pg 1 - 3; game player).

Re claim 48:

The method of claim 1, wherein the attributes associated with each player comprise at least one of the players vital statistics, general attributes (Madden, pg 9), offensive/defensive attributes and specialized attributes (Madden, from pg 106, "Breakdown").

Re claim 2:

The method for simulating an athletic event recited in claim 48, wherein the vital statistics comprise the player's height and weight (Madden, pg 9), wherein the general attributes comprise acceleration

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(Madden, pg 16; pg 53 - 61), agility (Madden, pg 16; pg 53 - 61), awareness (Madden, pg 87 - 88; pg 106 - 107), elusiveness (Madden, pg 54 - 61; pg 97), jumping (Madden, pg 53 - 61), speed (Madden, pg 53 - 61), stamina (Madden, pg 91), and strength (Madden, pg 53 - 61), wherein the offensive/defensive attributes comprise breaking tackles (Madden, pg 16; pg 55 - 61), catching (Madden, pg 55 - 61), pass blocking (Madden, pg 90, pg 106), run blocking (Madden, pg 90, pg 106), throwing accuracy (Madden, pg 16; pg 58; pg 90), and throwing power (Madden, pg 16; pg 58; pg 90), wherein the specialized attributes comprise injury recovery (Madden, pg 33; "Once the season is over, the player will come off the IR if the injury was not career-ending..."), toughness (Madden, pg 257), instinct and experience (Madden, pg 257).

Re claim 6:

The method for simulating an athletic event recited in claim 1, further comprising: entering each play in a playbook categorized according to the type of play (Madden, from pg 209, "PLAYBOOKS").

Re claim 7:

The method for simulating an athletic event recited in claim 1, further comprising: viewing the play as either a two-dimensional overhead view, a two - dimensional side view, or a three-dimensional animated player view (Madden, pg 2) and further comprising exporting the play established in the form of a movie (Madden, pg 8 - 9).

Re claim 9:

A system for simulating an athletic event (Madden, pg 1 - 3), comprising:

a player module to enter players for positions in a squad on an offensive, defensive or special team, wherein each player has attributes which predict athletic performance (Madden, from pg 16 - 17);

a play module to establish a play based on a formation in which the moving pattern and activity of each player is defined; and (Madden, from pg 16 - 17)

a run designed play module to simulate the play by having each player executing the moving pattern and activity as modified by the vital statistics, general attributes (Madden, pg 9, "The height and

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weight stats are customizable..."), offensive/defensive attributes (Madden, pg 16 - 17) and specialized attributes associated with each player (Madden, pg 9, "With the game's extensive general manager options, you can do everything from creating a player to creating an entire team...If you enjoy customizing your own team and players..."); wherein the outcome of the play is based upon the moving patterns and activities as modified by the attributes associated with each player (Madden, from pg 16).

Re claim 10:

The system for simulating an athletic event as recited in claim 9, further comprising:

a squad creation module to create a squad of players based upon the players entered using the player module (Madden, from pg 16, from pg 209), wherein each squad of players is associated with some specific game function, further comprising: a formation module to establish the formation using the squad of players, further comprising: a playbook module to enter each play in a playbook categorized according to the type of play (Madden, from pg 209, "PLAYBOOKS"), further comprising: a player specific camera viewing module to view the play as either a two- dimensional overhead view, a two-dimensional side view, or a three-dimensional animated player view (Madden, pg 2), further comprising: an exporting play module to export the play established in the form of a movie (Madden, pg 8 - 9).

Re claim 19:

A computer program embedded in a computer readable medium for simulating an athletic event, comprising (Madden, pg 1 - 3):

a player code segment to enter players for positions in a squad on an offensive, defensive or special team, wherein each player has attributes which predict athletic performance (Madden, from pg 16 - 17);

a play code segment to establish a play based on a formation in which the moving pattern and activity of each player is defined (Madden, from pg 16 - 17); and

a run designed play code segment to simulate the play by having each player executing the moving pattern and activity as modified by the vital statistics, general attributes (Madden, pg 9, "The

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height and weight stats are customizable..."), offensive/defensive attributes (Madden, pg 16 - 17) and specialized attributes associated with each player (Madden, pg 9, "With the game's extensive general manager options, you can do everything from creating a player to creating an entire team...If you enjoy customizing your own team and players..."), wherein the outcome of the play is based upon the moving patterns and activities as modified by the attributes associated with each player (Madden, from pg 16).

Re claim 20:

The computer program for simulating an athletic event as recited in claim 19, further comprising:

a squad creation code segment to create a squad of players based upon the players entered using the player code segment (Madden, from pg 16, from pg 209), wherein each squad of players is associated with some specific game function, a formation code segment to establish for formation using the squad of players (Madden, from pg 16),

a playbook code segment to enter each play in a playbook categorized according to the type of play (Madden, from pg 209, "PLAYBOOKS"),

a player specific camera viewing code segment to view the play as either a two-dimensional overhead view, a two-dimensional side view, or three-dimensional animated player view, and (Madden, pg 2)

an exporting play code segment to export the play established in the form of a movie (Madden, pg 8 - 9).

Re claim 41:

A method for simulating an athletic event (Madden, pg 1 - 3), comprising:

entering players for positions in a squad on an offensive, defensive or special team, wherein each player has attributes which predict athletic performance (Madden, from pg 16);

placing each player in a formation (Madden, from pg 16);

establishing a play based on the formation in which the moving pattern and activity of at least one player is defined (Madden, from pg 16);

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simulating the play by having the at least one player executing the moving pattern and activity as modified by the vital statistics, general attributes (Madden, pg 9, "The height and weight stats are customizable..."), offensive/defensive attributes (Madden, pg 16 - 17) and specialized attributes associated the at least one player (Madden, pg 9, "With the game's extensive general manager options, you can do everything from creating a player to creating an entire team...If you enjoy customizing your own team and players..."), wherein the outcome of the play is based upon the moving patterns and activities as modified by the attributes associated with the at least one player (Madden, from pg 16).

Re claim 42:

The method for simulating an athletic event recited in claim 51, wherein the vital statistics comprise the player's height and weight (Madden, pg 9), wherein the general attributes comprise acceleration (Madden, pg 16; pg 53 - 61), agility (Madden, pg 16; pg 53 - 61), awareness (Madden, pg 87 - 88; pg 106 - 107), elusiveness(Madden, pg 54 - 61; pg 97), jumping (Madden, pg 53 - 61), speed (Madden, pg 53 - 61), stamina (Madden, pg 91), and strength (Madden, pg 53 - 61), wherein the offensive/defensive attributes comprise breaking tackles (Madden, pg 16; pg 55 - 61), catching (Madden, pg 55 - 61), pass blocking (Madden, pg 90, pg 106), run blocking (Madden, pg 90, pg 106), throwing accuracy (Madden, pg 16; pg 58; pg 90), and throwing power (Madden, pg 16; pg 58; pg 90), wherein the specialized attributes comprise injury recovery (Madden, pg 33; "Once the season is over, the player will come off the IR (Injury Report) if the injury was not career-ending..."), toughness (Madden, pg 257), instinct and experience (Madden, pg 257).

Re claim 46:

A system for simulating an athletic event, comprising:

a player module to enter players for positions in a squad on an offensive, defensive or special team (Madden, from pg 16), wherein at least one player has vital statistics, general attributes (Madden, pg 9, "The height and weight stats are customizable..."), offensive/defensive attributes (Madden, pg 16 - 17) and specialized attributes (Madden, pg 9, "With the game's extensive general manager options, you

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can do everything from creating a player to creating an entire team...If you enjoy customizing your own team and players..." which predict athletic performance (Madden, from pg 16);

a play module to establish a play based on a formation in which the moving pattern and activity of the at least one player is defined; and (Madden, from pg 16; from pg 209)

a run designed play module to simulate the play by having the at least one player executing the moving pattern and activity as modified by the vital statistics, general attributes, offensive/defensive attributes and specialized attributes associated with the at least one player, wherein the outcome of the play is based upon the moving patterns and activities as modified by the vital statistics, general attributes, offensive/defensive attributes and specialized attributes associated with the at least one player (Madden from pg 16; from pg 209).

Re claim 47:

A computer program embodied on a computer readable medium for simulating an athletic event (Madden, from pg 16), comprising:

a player code segment to enter players for positions in a squad on an offensive, defensive or special team (Madden, from pg 16), wherein at least one player has vital statistics, general attributes (Madden, pg 9, "The height and weight stats are customizable..."), offensive/defensive attributes (Madden, pg 16 - 17) and specialized attributes (Madden, pg 9, "With the game's extensive general manager options, you can do everything from creating a player to creating an entire team...If you enjoy customizing your own team and players..." which predict athletic performance (Madden, from pg 16);

a play code segment to establish a play based on a formation in which the moving pattern and activity of the at least one player is defined; and (Madden, from pg 16; from pg 209)

a run designed play code segment to simulate the play by having the at least one player executing the moving pattern and activity as modified by the vital statistics, general attributes, offensive/defensive attributes and specialized attributes associated with the at least one player, wherein the outcome of the play is based upon the moving patterns and activities as modified by the vital

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statistics, general attributes, offensive/defensive attributes and specialized attributes associated with the at least one player (Madden, from pg 16; from pg 209).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. **Claims 38 - 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Madden NFL 2002 (Playstation 2 - release 8/19/2001) evident by www.gamespot.com (denoted herein after as Madden) in view of French et al. (US 6,308,565 B1).**

Re claim 38:

Madden discloses a method of simulating at least a portion of an athletic game or sport and for at least one player on a team participating in that game or sport, thereby facilitating the training of said one player under simulated game conditions and in the classroom rather than on the playing field or arena, and thereby substantially compressing the training time while avoiding a potential injury to said one player on the practice field or arena (Madden, pg 1 - 3); comprising the steps of,

first, presenting at least one of the team's defensive or offensive formations and intended subsequent play; and (Madden, from pg 16; from pg 209)

second, presenting the team's opponent's likely action or reaction in response thereto, respectively (Madden, from pg 16 - 29; Madden discloses a simulated football game that a player can learn about an opponent's strategy);

Madden does not disclose the first and second presentations are viewed from the position of said one player's own eyes had said one player been on the playing field or arena rather than from the perspective of a spectator. However, French teaches accurate simulation of sport to quantify and train performance.

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French further teaches a first person perspective which is a view on the display of the virtual space from the perspective of a player (French, col 31, lines 30 - col 32, line 21). Therefore, in view of French, it would have been obvious to one of ordinary skill in the art, at the time of invention, to modify the method described in Madden, by providing the first person perspective as taught by French, since French explicitly states (French, col 32, lines 18 - 21) the display of a first person perspective increases the fidelity of the simulation, by making the view on the display closer to that which would be perceived by the player in a real life activity.

Re claim 39:

Madden discloses method further including the steps of

presenting all of the team's defensive or offensive formations and plays and the team opponent's likely actions or reactions in response thereto (Madden, from pg 16 - 29; Madden discloses a simulated football game that a player can learn about an opponent's strategy), and

customizing the presentations for each of the team's respective players on those formations and plays, further including the step of factoring in the capabilities for each of the team's respective players, thereby analyzing each of the team's formations and plays and determining which players on the team should be assigned to the respective formations and plays, and thereby tailoring the team to the opponent and tending to maximize the likelihood of the team beating its opponent (Madden, from pg 16; from pg 209).

***Response to Arguments***

9. Applicant's arguments filed 5/14/2009 have been fully considered but they are not persuasive.
10. Applicant has added two new claims (claims 52 and 53) directed to apparatus on which the method is to be performed in order to overcome the rejection under 35 U.S.C. 101 for claim(s) 1 - 2, 6 - 7, 38 - 39, 41 - 42, 48. However, a statutory products or things for accomplishing the method have to be incorporated in the method claims in order to be statutory. Therefore, the examiner maintains the non-statutory rejection.

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Re claims 1, 2, 9 - 10, 19 - 20, 41 - 42, 46 - 48,

11. Applicant states "With respect to claim 1, Madden NFL 2002 does not allow the user to "enter" players; data for the simulated players is resident on the user's game console. The common definition of the verb "enter" in the software context means to "insert." Madden does not allow or anticipate players to be entered directly. Applicant further states "Madden does not allow or anticipate players to be entered directly and then placed in a formation". The examiner respectfully disagrees. Madden states (Madden, pg 16) "This section deals with what each player's position is, and what skills you want to look for when you either sign or trade for that position..." Madden further states (Madden, pg 76) "Drafting Players, Scroll through player positions with L2/R2 and through available players by using Up/Down on the D-Pad. Then when you have found the player you wish to draft, press the X button. After the player is selected, he will be added to your roster. Then the remaining Computer teams will draft their players for the round, and the next round will begin."

12. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e.,

"the present invention is not limited to American style football but is suitable for a wide range of athletic events and sports."

"the Madden NFL 2002 game console user is limited to the attributes and vital statistics contained within the game's parameters; the user cannot import players or data for players as contemplated by the present invention."

"Madden does not allow or anticipate players to be entered directly and then placed in a formation."

"Madden does not permit route adjustment and defensive alignment features at the time of invention.")

are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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Re claims 38 - 39:

13. Applicant discloses an exhibit 1: "Madden NFL" from Wikipedia.com. However, the accuracy and reliability of the information found on Wikipedia cannot be relied as evident for patent prosecution, since Wikipedia has a user interface for modifying its content. See MPEP 2127: "ELECTRONIC PUBLICATIONS AS PRIOR ART".

14. Applicant states "... all of the added features of the Post 2002 releases of Madden NFL, and continuing, show that there is no way for users to enter players and players data directly..." The examiner respectfully disagrees. Madden states (Madden, pg 16) "This section deals with what each player's position is, and what skills you want to look for when you either sign or trade for that position..." Madden further states (Madden, pg 76) "Drafting Players, Scroll through player positions with L2/R2 and through available players by using Up/Down on the D-Pad. Then when you have found the player you wish to draft, press the X button. After the player is selected, he will be added to your roster. Then the remaining Computer teams will draft their players for the round, and the next round will begin."

15. Applicant further states "... It is incorrect to characterize Madden as facilitating the training of a player under simulated game conditions (claim 38) and presenting a team's formations and plays and opponent's likely actions or reactions..." The examiner respectfully disagrees. The examiner interprets a game player can uses Madden as a training tool to practice football.

16. Applicant further states "the examiner has cited merely a few lines of the French reference and rejects the application in light of Madden, which is inappropriate." However, applicant has not particularly points out the allege errors of the rejections and how the few lines would not support a conclusion of obviousness.

17. Applicant further states "French only contemplates tracking performance, and Madden still cannot solve the problems the present invention addresses, even with obvious commercial success of its rudimentary game since the present applicant was filed." (See claims 1, 2, 9 - 10, 19 - 20, 41 - 42, 46 - 48 arguments above)

18. Applicant further states

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"It is improper to use hindsight reconstruction by using the applicant's own disclosure as a "guide through the maze of prior art references, combining the right references in the right way to achieve the result" the applicant claims.",

"There should be some teaching, or at least suggestion, in the references that the individual elements should be combined as claimed."

"The mere fact that the references originate from the same art or that the disclosures can be combined does not make the combination obvious unless the art also contains something to suggest the desirability of the combination."

"The teachings of the references can be combined only if there is some suggestion or incentive in the prior art to do so."

"Clearly there is no suggestion in the cited references to combine the elements of the present invention in the way the invention has done."

However, the motivations for combining the two references are expressly disclosed in French (See claim 38 above).

19. Applicant further states KSR rationales for combining references. However, the examiner uses TSM (teaching-suggestion-motivation) for combining references.

### ***Conclusion***

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACK YIP whose telephone number is (571)270-5048. The examiner can normally be reached on Monday - Friday 9:30am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571)272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/XUAN M. THAI/  
Supervisory Patent Examiner, Art Unit 3715

/J. Y./  
Examiner, Art Unit 3715